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TO: United States Patent and Trademark Office  
COMPANY: Examiner David C. Comstock, Art Unit 3733FAX NUMBER: 571-273-8300  
PHONE NUMBER:

FROM: Brad A. Schepers

DIRECT DIAL: (317) 238-6334  
FAX NUMBER: (317) 636-1507RE: Interview Summary and Comments on Statement of Reasons for Allowance for U.S. Patent Application  
No. 10/734,041 to Eisermann et al.COMMENTS: I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and  
Trademark Office at 571-273-8300 on:May 20, 2009  
(Date of Transmission)Brad A. Schepers  
Name of Registered Representative

A handwritten signature of Brad A. Schepers in black ink.

Signature

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Client Matter No.: 334 MSDI-222

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PTO/SB/21 (09-04)

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TRANSMITTAL  
FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	10/734,041
Filing Date	December 11, 2003
First Named Inventor	Lukas Elsermann et al.
Art Unit	3733
Examiner Name	David C. Camstock
Total Number of Pages in This Submission	5
Attorney Docket Number	MSDI-2222/PC765.00

## ENCLOSURES (Check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____ <input type="checkbox"/> Landscape Table on CD	<input type="checkbox"/> After Allowance Communication to TC <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Interview Summary; Comments On Statement of Reasons for Allowance
<input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Remarks
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Information Disclosure Statement	
<input type="checkbox"/> Certified Copy of Priority Document(s)		
<input type="checkbox"/> Reply to Missing Parts/ Incomplete Application <input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53		

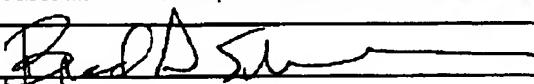
## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Krieg Devault LLP		
Signature			
Printed name	Brad A. Schepers		
Date	May 20, 2009	Reg. No.	45,431

## CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature



Typed or printed name	Brad A. Schepers	Date	May 20, 2009
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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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MAY 20 2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re patent application of: ) Before the Examiner  
Eisermann et al. ) David C. Comstock  
)  
Application Serial No. 10/734,041 ) Group Art Unit 3733  
)  
Filed December 11, 2003 ) Ref. No. MSDI-222/  
 ) PC765.00  
)  
EXPANDABLE INTERVERTEBRAL ) May 20, 2009  
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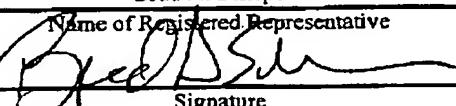
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**INTERVIEW SUMMARY**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the telephonic interview conducted between Examiner Comstock and the undersigned representative on March 30, 2009, please enter the following Interview Summary. Additionally, please provide any extensions of time necessary and charge any additional fees which may be necessary to Deposit Account No. 12-2424, but not to include any payment of issue fees.

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May 20, 2009
_____ Date of Signature

REMARKS

The Applicant's representative thanks Examiner Comstock for the courtesy of initiating the telephonic interview conducted on March 30, 2009 to advance prosecution of the subject application. Participants in the telephonic interview included Examiner Comstock and the undersigned representative.

Claims 8, 33, 41 and 48 were discussed with regard to U.S. Patent No. 5,059,193 to Kuslich and possible amendments of these claims to improve their form and to place the application in condition for allowance. Specifically, proposed amendments to claims 8, 33, 41 and 48 were discussed with regard to recitation of slidable engagement between the expansion member and the first and second axial walls of the implant. Examiner Comstock indicated that the subject application would be placed in condition for allowance if the proposed amendments were incorporated into the claims. Agreement was reached between Examiner Comstock and the undersigned representative with regard to the proposed claim amendments, which ultimately led to issuance of the Notice of Allowance dated April 2, 2009 including entry of the proposed claim amendments via an Examiner's Amendment.

Respectfully submitted,

By: 

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